

HOUSE No. 1122

The Commonwealth of Massachusetts

PRESENTED BY:

Jonathan D. Zlotnik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to capital of credit unions.

PETITION OF:

NAME:

Jonathan D. Zlotnik

DISTRICT/ADDRESS:

2nd Worcester

HOUSE No. 1122

By Mr. Zlotnik of Gardner, a petition (accompanied by bill, House, No. 1122) of Jonathan D. Zlotnik relative to capital of credit unions. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 590 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to capital of credit unions.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 171 of the General Laws as appearing in the 2014

2 Official

3 Edition is hereby amended by inserting after the definition of “Foreign credit union” the

4 following definition:-

5 “Founders Capital Shares”, secondary capital, which a credit union may accept from

6 natural

7 person members, nonnatural person members and nonnatural person nonmembers subject

8 to

9 certain conditions.

10 SECTION 2. Said chapter 171 is hereby amended by adding the following section:-

11 Section 85. A credit union may issue Founders Capital Shares obtained from natural
12 person

13 members, nonnatural person members and nonnatural person nonmembers subject to the
14 following conditions:

15 (1) Founders Capital Shares plan. Before accepting Founders Capital Shares, a credit
16 union shall

17 adopt, and forward to the commissioner for approval, a written “Founders Capital Shares
18 Plan”

19 that, at a minimum:

20 (i) States the maximum aggregate amount of Founders Capital Shares the credit union
21 plans to

22 accept;

23 (ii) Identifies the purpose for which the aggregate Founders Capital Shares will be used,
24 and how

25 it will be repaid;

26 (iii) Explains how the credit union will provide for liquidity to repay Founders Capital
27 Shares

28 upon maturity of the accounts;

29 (iv) Demonstrates that the planned uses of Founders Capital Shares conform to the credit
30 union's

31 strategic plan, business plan and budget; and

32 (v) Includes supporting pro forma financial statements, including any off-balance sheet
33 items,

34 covering a minimum of the next two years.

35 (2) Decision on plan. If a credit union is not notified within 45 days of receipt of a
36 Founders

37 Capital Shares Plan that the plan is approved or disapproved, the credit union may
38 proceed to

39 accept Founders Capital Shares accounts pursuant to the plan.

40 (3) Nonshare account. The Founders Capital Shares account must be established as a
41 Founders

42 Capital Shares account or other form of non-share account.

43 (4) Minimum maturity. The maturity of the Founders Capital Shares account must be a
44 minimum

45 of five years.

46 (5) Uninsured account. The Founders Capital Shares account will not be insured by the
47 National

48 Credit Union Share Insurance Fund.

49 (6) Subordination of claim. The Founders Capital Shares account investor's claim against

50 the

51 credit union must be subordinate to all other claims including those of shareholders,

52 creditors,

53 the National Credit Union Share Insurance Fund and the Massachusetts Credit Union

54 Share

55 Insurance Corporation.

56 (7) Availability to cover losses. Funds deposited into a Founders Capital Shares account,

57 including interest accrued and paid into the Founders Capital Shares account, must be

58 available

59 to cover operating losses realized by the credit union that exceed its net available reserves

60 (exclusive of Founders Capital Shares and allowance accounts for loan and lease losses),

61 and to

62 the extent funds are so used, the credit union must not restore or replenish the account

63 under any

64 circumstances. The credit union may, in lieu of paying interest into the Founders Capital

65 Shares

66 account, pay accrued interest directly to the investor or into a separate account from
67 which the
68 Founders Capital Shares investor may make withdrawals. Losses must be distributed pro-
69 rata
70 among all Founders Capital Shares accounts held by the credit union at the time the
71 losses are
72 realized.

73 (8) Security. The Founders Capital Shares account may not be pledged or provided by the
74 account investor as security on a loan or other obligation with the credit union or any
75 other party.

76 (9) Merger or dissolution. In the event of merger or other voluntary dissolution of the
77 credit
78 union, other than merger into another credit union, the Founders Capital Shares accounts
79 will be
80 closed and paid out to the account investor to the extent they are not needed to cover
81 losses at the
82 time of merger or dissolution.

83 (10) Contract agreement. A Founders Capital Shares account contract agreement must be
84 executed by an authorized representative of the account investor and of the credit union

85 reflecting the terms and conditions mandated by this section and any other terms and
86 conditions
87 not inconsistent with this section.

88 (11) Disclosure and acknowledgement. An authorized representative of the credit union
89 and of

90 the Founders Capital Shares account investor each must execute a “Disclosure and

91 Acknowledgment” at the time of entering into the account agreement. The “Disclosure
92 and

93 Acknowledgment” must include: (i) the name of the credit union and investor; (ii) the
94 amount of

95 funds committed to the Founders Capital Shares account; (iii) the term during which the
96 funds

97 are committed to the Founders Capital Shares account, (iv) that the funds are redeemable
98 prior to

99 maturity only at the option of the credit union and with prior approval of the
100 commissioner; (v)

101 that the Founders Capital Shares account is not a share account; (vi) that the funds
102 committed to

103 the Founders Capital Shares account are not insured by the National Credit Union

104 Administration; (vii) an acknowledgment of prepayment risk; (viii) that the funds
105 committed to
106 the Founders Capital Shares account may be used by the named credit union to cover
107 losses; (ix)
108 an agreement with respect to payment of accrued interest; (x) an acknowledgment
109 regarding
110 subordination of claims in the event of liquidation of the credit union; (xi) an
111 acknowledgment
112 that the National Credit Union Administration Board or the commissioner may prohibit
113 the credit
114 union from paying principal; dividends or interest on its Founders Capital Shares
115 accounts under
116 some circumstances. The credit union must retain an original of the account agreement
117 and the
118 “Disclosure and Acknowledgment” for the term of the agreement, and a copy must be
119 provided
120 to the account investor.
121 (12) Prompt corrective action. The commissioner may prohibit a credit union classified
122 “critically undercapitalized” or, if “new”, as “moderately capitalized”, “marginally
123 capitalized”,

124 “minimally capitalized” or “uncapitalized”, under the National Credit Union
125 Administration’s
126 prompt corrective action regulations as from time to time in effect, as the case may be,
127 from
128 paying principal, dividends or interest on its Founders Capital Shares accounts, except
129 that
130 unpaid dividends or interest will continue to accrue under the terms of the account to the
131 extent
132 permitted by law.

133 SECTION 3. Section 6D of chapter 294 of the acts of 1961, as most recently amended by
134 section 4 of chapter 168 of the acts of 2004, is hereby further amended by adding the
135 following

136 paragraph:-

137 (m) The Massachusetts Credit Union Share Insurance Corporation may insure Founders
138 Capital
139 Shares issued by credit unions, as allowed by the National Credit Union Administration,
140 upon
141 terms and conditions established by the directors of the corporation.